

**STATE OF SOUTH CAROLINA****(Caption of Case)**

**Amended Application of Jacobb Utilities, LLC for approval of a contract with The Cliffs at Keowee Springs to serve Keowee Springs Development**

197167

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**COVER SHEET****DOCKET****NUMBER: 2008 - 240 - S****(Please type or print)****Submitted by: James S. Eakes****SC Bar Number: SC Bar # 1820****Address: Allen and Eakes****Telephone: 864-224-1681****PO Box 1405****Fax: 864-234-8411****Anderson, SC 29622****Other:****Email: sheilat@goldieassociates.com**

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)

☐ **Emergency Relief demanded in petition**      ☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:**

<b>INDUSTRY (Check one)</b>	<b>NATURE OF ACTION (Check all that apply)</b>		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certificatio
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigator
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input checked="" type="checkbox"/> Other: Amended App.
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

**ALLEN AND EAKES**  
ATTORNEYS AT LAW  
P.O. BOX 1405  
ANDERSON, S. C. 29622

**RECEIVED**  
FEB 02 2009

BY: .....

RICHARD K. ALLEN, JR.\*  
JAMES S. EAKES\*

THOMAS ALLEN (1881-1963)  
RICHARD K. ALLEN (1921-1982)

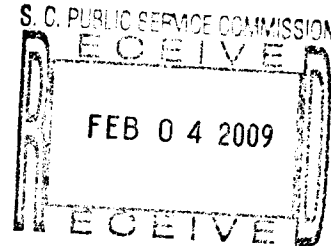
TEL. (864) 224-1681  
114 WEST ORR STREET  
ZIP 29625  
FAX (864) 231-8411

January 30, 2009

\* CERTIFIED CIVIL COURT MEDIATOR

**VIA - FIRST CLASS MAIL**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, SC 29210



**RE: Amended Application of Jacabb Utilities, LLC for approval of a contract with  
The Cliffs at Keowee Springs, LLC, to serve The Cliffs at Keowee Springs  
Development. (Docket No. 2008-240-S)**

Dear Mr. Terreni:

Enclosed for filing are the original and ten (10) copies of the Amended Application of Jacabb Utilities, LLC in the above reference matter. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy of this letter that is enclosed and returning it to me via first class mail.

By copy of this letter, I am serving the Office of Regulatory Staff and enclose a certificate to that effect. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

**ALLEN & EAKES**

A handwritten signature in dark ink, appearing to read "James S. Eakes".

James S. Eakes

Enclosure

cc: Dukes Scott, Executive Director, ORS  
Stephen R. Goldie, Jacabb Utilites, LLC

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2008-240-S**

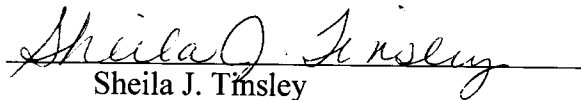
IN RE:

Amended Application of Jacobb Utilities, )  
LLC for approval of a contract with )  
The Cliffs at Keowee Springs, LLC to serve )  
The Cliffs at Keowee Springs Development )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of the **Amended Application** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Dukes Scott  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, SC 29211

  
Sheila J. Tinsley

Seneca, South Carolina  
This 3 day of Feb. 2009

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2008-240-S**

IN RE:

Amended Application of Jacabb Utilities, LLC for approval of a contract with The Cliffs at Keowee Springs, LLC to serve The Cliffs at Keowee Springs Development	) ) ) ) ) ) <hr/>	<b>AMENDED APPLICATION</b>
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Jacabb Utilities, LLC ("Applicant" or "Utility") hereby submits a contract between it and The Cliffs at Keowee Springs, LLC ("Developer") for consideration by this Honorable Commission under Vol. 26 S.C. Code Ann. Regs. R.R. 103-541 (Supp.2007). In support of this Application, Applicant would respectively show as follows:

- 122  
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1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the SC Public Service Commission ("Commission") in Pickens County, as well as certain other counties in this state. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same.
  2. The Applicant seeks approval of an agreement for sewer services entered into between Applicant and the Developer dated May 16, 2008 ("Agreement"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "A". Applicant will provide service to the proposed development pursuant to all of the terms, conditions, rates, and charges set forth in its existing rate schedule as approved on Order No. 2003-

141 and Order No. 2007-869 which transfers the rate to Jacobb Utilities and as are on file with this Commission and in effect from time to time.

3. Pursuant to this agreement, Applicant proposes to serve The Cliffs at Keowee Springs Development which will consist of approximately nine (9) commercial units and one hundred and fifty-four (154) single family residences and possibly other commercially or residentially developed land contiguous to the Site. The Agreement provides, *inter alia*, that Developer will construct all of the necessary sewer facilities ("Facilities") required to serve the Property, acquire all necessary easements and rights-of-way ("Easements") and convey such Facilities and Easements to Applicant. Performance of the Agreement is conditioned upon its approval by this Commission.

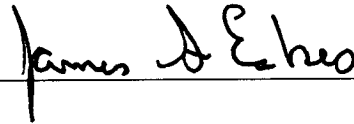
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22053  
4. Pursuant to Article III, §13 of the Agreement, Applicant has agreed to reserve adequate sewer capacity for up to one hundred and eight thousand (108,000) gallons per day (gpd) of wastewater flow from connections located within the Property or contiguous properties to the Site. Further, the terms of this contract allow the Developer to expand the Facilities for additional units and Applicant has agreed to allow the additional units to connect and discharge into the Facilities.

5. Applicant submits that the public convenience and necessity will be served by the approval of this Agreement. Applicant further submits that no hearing in this matter is required.

6. All correspondence and communications regarding this matter should be sent to the undersigned.

WHEREFORE, having fully set forth its Application, Applicant prays that the Agreement, be approved, that a hearing on the within matter be waived or review of the

within application be expedited, and that Applicant be granted such other and further relief as the Commission may deem just and proper.



James S. Eakes  
Allen and Eakes  
PO Box 1405  
Anderson, SC 29622  
(864) 224-1681

Attorney for Applicant

Anderson, South Carolina

This 30<sup>th</sup> day of January 2009

172  
#305-3

**EXHIBIT "A"**

**Agreement for Sewer Services  
The Cliffs at Keowee Springs, LLC**

RECEIVED  
5/27/08

**AGREEMENT FOR SEWER SERVICES**  
**THE CLIFFS AT KEOWEE SPRINGS, LLC**  
**PICKENS COUNTY, SC**

This Agreement (hereinafter referred to as "Agreement") is entered into this 16 day of May, 2008 by and between The Cliffs at Keowee Springs, LLC (hereinafter referred to as "Developer"), and Jacobb Utilities, LLC, a South Carolina corporation (hereinafter referred to as "Utility") (Developer and Utility hereinafter collectively referred to as "Parties").

**WITNESSETH**

**WHEREAS**, Developer is the owner of or is duly authorized to act on behalf of the owners of certain real estate located 0.2 miles from Highway 133 on Keowee Baptist Church Road near Six Mile, S.C. in Pickens County, South Carolina (hereinafter referred to as the "Site" or "Property" (see attached **Exhibit 1**));

**WHEREAS**, Developer desires to develop The Cliffs at Keowee Springs which will contain approximately nine (9) commercial units and one hundred and fifty-four (154) single family residences (hereinafter referred to as the "Project") and possibly other commercially or residentially developed land contiguous to the Site when completed;

**WHEREAS**, Utility is a privately owned utility engaged in the business of furnishing sewer services to the public and is fully capable of providing sewer service to the Property located in Pickens County. Utility is subject to regulation by the South Carolina Public Service Commission pursuant to S.C. Code §58-5-210 *et seq.*;

**WHEREAS**, The Utility desires to have constructed and installed, and the Developer desires to construct and install, the wastewater collection, treatment, and

disposal facilities ("Facilities") to serve the Property and contiguous parcels subject to the terms and conditions of this Agreement;

**WHEREAS**, Goldie & Associates, Inc. ("Engineer") designed the Facilities for this Project and Utility understands that construction will be completed in compliance with the plans dated February 21, 2008 and specifications dated October 2007 provided by the Engineer. In relation to later phases of development, if any should occur, Utility understands that construction will be completed in compliance with the design and specifications provided by the Engineer or, alternatively, another later retained licensed engineering firm ("Subsequent Engineer") that completes such designs and specifications with the approval of the plan and specifications by the Utility, which will not be unreasonably withheld; and

**WHEREAS**, Developer desires Utility to provide wastewater utility service within the Property and contiguous properties and Utility desires to provide wastewater utility service according to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants as hereinafter set forth, the Parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

1. Commercial Unit – A non-single family building.
2. Force main – The pipe used to convey sewage or septic tank effluent from multiple service lines that have been pressurized.
3. Residential Unit – A single family building.
4. Service Line – The pipe connecting the STEP system to the force main.

5. Sewage Drain Line – The gravity sewer pipe that transports sewage from a building to its septic tank.
6. STEP System – Septic tank effluent pumping system, consisting of a tank, a filter, and pump(s) used for primary treatment of sewage.

## **ARTICLE II**

### **Representations and Warranties of the Parties**

1. The Utility represents and warrants that it employs and will continue to employ personnel with credentials equivalent to those generally accepted in the industry and/or as are required by applicable law to operate the Facilities and furnish sewer collection and treatment services to the commercial units operating at the Site or the residents living at the Site and contiguous properties thereto.
2. The Utility represents and warrants that it has reviewed the Engineer's plans and designs and represents the plans and designs are sufficient to serve the Project in their current form.
3. Developer represents and warrants that it will convey to the Utility, by recordable deed, such right, title and interest in and to such real estate as may be reasonably necessary to permit the Utility to carry out the terms and conditions of this Agreement. The conveyance shall be free and clear of all liens and encumbrances except that the Parties agree that conveyance of any such property rights shall be subject to Article VI which grants the Developer with an Option to Repurchase all conveyed property interests under certain prescribed conditions.
4. Developer will convey to Utility by recordable instruments and provide by recorded subdivision plats such easements or rights of way as the Utility may

reasonably require for the Utility's performance of its obligations under this Agreement. The Parties agree that conveyance of any and all such property rights shall be subject to Article VI.

5. The Parties represent and warrant to each other that they will cooperate fully with each other in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the Facilities contemplated by this Agreement.
6. Other than as otherwise stated herein, neither Developer nor any entity or individual affiliated with Developer has executed or will execute any agreement with any lot purchaser in the Site, or any other parties or made any representations to any such purchasers or other parties wherein such purchaser or other parties have acquired any interest in Facility to be installed under this Agreement.

### **ARTICLE III**

#### **Obligations and Construction of Facilities**

1. In accordance with the plans and specifications prepared by the Engineer, Developer will construct and install all necessary wastewater collection, treatment, and disposal facilities to serve the Site and contiguous properties, including but not limited to commercial septic tanks and pumping systems, force mains, wastewater treatment and disposal equipment and facilities, building and other facilities as are reasonably required to provide adequate wastewater services (previously denominated herein as the "Facilities"). Developer or residential owner shall construct and install all necessary residential STEP systems that are

connected onto the system. Developer shall interconnect the wastewater facilities to Utility's wastewater system as shown on the Site's plat.

2. All materials used by the Developer for said Facilities shall be new, first-class, and suitable for the uses made thereof.
3. All Facilities constructed and installed by Developer pursuant to Article III shall be constructed and installed without cost or expense to Utility.
4. All plans, specifications and construction of the Facilities shall be in accordance with the Engineer's plans and specifications, and, therefore, in compliance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies with jurisdiction over the same.
5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur during the construction of the Facilities due to the acts or omissions of Developer, anyone acting on Developer's behalf, or anyone under Developer's supervision and control, including but not limited to claims made by Developer's employees. Developer shall, at its own cost and expense, pay all costs and other expenses arising from such suits or incurred in connection therewith, including reasonable attorneys' fees and costs associated with the indemnification provided to the Utility under this Agreement.
6. The Parties shall cooperatively obtain all requisite permits, zoning variances, and other approvals required to build the Facilities prior to construction.
7. Except as provided in Article VI, all of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility upon completion

of the Project, with the exception of the commercial and residential sewage drain lines, residential STEP systems, and the residential/commercial service lines for which each residential/commercial unit shall retain ownership and maintenance responsibility. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the construction of the Facilities herein. Developer agrees to provide to Utility documentary evidence, in form satisfactory to Utility, sufficient to establish the original cost of the Facilities.

8. Subject to Article VI, as set forth elsewhere herein, Developer shall grant, prior to the transfer to Utility of the Facilities, easements satisfactory to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Site and providing reasonably adequate rights of access and working space for such purposes.
9. Developer shall provide to Utility, upon conveyance of the Facilities to Utility, as-built drawings from the Engineer and all other information reasonably required to operate, maintain, and repair the Facilities.
10. Developer shall not connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, and

written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction over the same.

11. All connections must be inspected by the Utility prior to backfilling and covering of any pipes. Written notice to the Utility requesting an inspection of a connection shall be made at least twenty-four (24) hours in advance of the inspection, excluding weekends and official Utility holidays. Utility's failure to inspect within another (24) hour period shall be deemed authorization to backfill and cover by Developer.
12. Should the Developer fail to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
13. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate capacity for up to one hundred and eight thousand (108,000) gallons per day (gpd) of wastewater flow from connections located within the Property or contiguous properties to the Site.

#### **ARTICLE IV**

##### **Utility Services, Connection Fees, Rates and Charges**

1. Upon installation of the Facilities, Utility agrees to supply all residential/commercial customers within the Site, and contiguous properties developed by the Developer, with adequate and customary sanitary sewer service, and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all regulatory authorities.

2. Beyond what is specifically contemplated by this Agreement, and to the extent Developer later wishes to increase the number of potential users connected to the Facilities (or otherwise increase the available capacity of the Facilities for its own benefit), Developer may do so at its sole discretion so long as it pays for all construction costs associated with any upgrades in the Facilities necessary to increase the number of users or capacity. Should the Facilities, or the capacity thereof, be expanded under this provision, all remaining terms and conditions of this Agreement shall apply to the expanded Facilities. This provision is similarly subject to the required approvals of any and all governmental authorities.
3. The Parties agree that the Facilities are being constructed for the benefit of the Developer, residential/commercial lot owners at the Site, and/or lot owners of contiguous properties developed by Developer. Utility agrees not to provide sewer service from Facilities to any property outside of the Site, other than contiguous properties developed by Developer, without the prior written approval of the Developer.
4. Lot owners within the Site (or contiguous properties developed by Developer) are responsible for applying for and paying for service at the rate as in effect from time to time prior to the provision of utility service. Such fees, usage and all other incidental rates and charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service approved by the South Carolina Public Service Commission (the "Commission" or "PSC") from time to time and then in effect and as otherwise provided herein.

5. Utility shall commence providing service upon completion of the Facilities and upon receiving necessary approvals from DHEC and PSC.
6. Developer agrees to pay Utility an availability fee in the amount of twenty-five dollars (\$25.00) per month/per lot if residential sewer service is available but not used, until the residential unit is sold. Developer agrees to pay Utility an availability fee in the amount of twenty-five dollars (\$25.00) per month/per 400 gpd flow allocated for each commercial unit if commercial sewer service is available but not used, until the commercial unit is sold. Thereafter, the lot purchaser will be responsible for paying the applicable availability fee, whether residential or commercial, until sewer services are used by the lot purchaser. Availability fees and rates are listed in attached **Exhibit 2**. In the event that the Developer eliminates and/or reduces the number of residential/commercial units, for the purpose of payment, the number of units in **Exhibit 2** cannot be reduced.
7. Once residential sewer services are used by a lot purchaser, no availability fee shall be charged for that lot and sewer rates are locked in at a rate of thirty-five dollars (\$35.00) per month for each residential unit for a period of two (2) years. Once commercial sewer services are used by a lot purchaser, no availability fee shall be charged for that lot and sewer rates are locked in at a rate of thirty-five dollars (\$35.00) per month per 400 gpd flow allocated for each commercial unit for a period of two (2) years.
8. Utility agrees that buyers of new residential units will not be charged a tap fee. However, a reconnect fee may be assessed to such homeowners should service be discontinued for failure to pay sewer service fees. The reconnect fee shall be in

accordance with applicable PSC regulations then in effect and is now two hundred and fifty dollars and no cents (\$250.00).

9. In the event Utility deems it necessary to apply to the PSC for rate increases with respect to sewer services provided to property owners served by the Facilities, Utility agrees to furnish Developer with notice (in the manner provided under Article VII of this Agreement) of its intent to file such an application ten (10) business days in advance of filing for such a rate increase. At that time, Utility agrees to furnish Developer with the materials it intends to present in support of its application for the increase of rates. This provision is intended to provide Developer with advance notice of the Utility's application for rate increases so that Developer may meaningfully participate in and prepare for any hearings conducted on such issues should Developer have an objection to the same. This provision is in no way intended to abridge the exclusive jurisdiction of the PSC over such matters, which is acknowledged by all Parties to this Agreement.

Utility agrees to furnish Developer with any notices or other documents received from governmental authorities (including but not limited to the PSC and SCDHEC) regarding matters which may impact recipients of sewer services from the Facilities, including but not limited to claims, liabilities, lawsuits, regulatory hearings, and rate increase hearings.

## **ARTICLE V**

### **Commission Approval**

1. Within thirty (30) business days following the execution of this Agreement, Utility will file a petition with the Commission requesting approval of this

Agreement, if necessary. All terms and conditions contained herein are subject to Utility receiving said approvals from the Commission and any other approvals necessary to commence operations of the Facilities.

## **ARTICLE VI**

### **Option to Repurchase**

1. Within 10 days of final execution of this Agreement, and as separate consideration for the Option to Repurchase contemplated by Article VI of this Agreement, Developer agrees to pay and Utility agrees to accept the sum of one thousand dollars and no cents (\$1,000.00).
2. In exchange for payment under Article VI, Utility grants Developer a Conditional Option to Repurchase (treated herein as "Repurchase Option") the Facilities, easements, rights of way, and all other property interests ("Property Interests") conveyed by Developer to Utility under the terms of this Agreement. All deeds and other documents later executed in furtherance of this Agreement shall reflect the existence of the Repurchase Option.
3. Developer will have an option to Repurchase the Property Interests for \$5,000.00 under the following circumstances:
  - a. A court of competent jurisdiction, or other authorized state, local, or federal agency, finds that Utility has engaged in gross misconduct or malfeasance.
  - b. A court of competent jurisdiction, or other authorized state, local, or federal agency, finds that Utility failed to abide by applicable federal, state, or local laws and regulations.

- c. A court of competent jurisdiction, or other authorized state, local, or federal agency, finds that Utility's conduct endangered, or continues to endanger, the health, safety, and welfare of individuals who reside at or near the Site.
- d. Sewer services become available to the Site through a governmental or quasi governmental agency such as a municipality, public service district, the County or the State, or an organization or entity formed and existing under S.C. Code §33-36-10 *et seq* or later re-codification of the same. In such an event, and for the benefit of such governmental entity who later has the capability and willingness to furnish sewer services to the Site, Utility agrees to deed all Property interests in the Site and Facilities back to the Developer who will then deed any property interests required by the governmental entity to furnish services. All Property Interests shall be deeded to Developer at such time as the governmental entity has the ability to furnish sewer services and has agreed to provide the same. Under this event, in addition to the \$5,000.00, one of the following (at the Developer's sole discretion):

- 1) the Developer (or its assign) will pay Utility the depreciated value (assessed at the time of payment utilizing the appropriate IRS Guidelines) of all commercially reasonable and necessary upgrades or improvements to the System minus any outstanding debt associated with any such upgrades or improvements, and the Developer will

assume the outstanding debt owed by Utility associated with said improvements; or

2) The Developer (or its assign) will pay Utility the depreciated value (assessed at the time of payment utilizing the appropriate IRS Guidelines) of all commercially reasonable and necessary upgrades or improvements to the System and the Utility will remain responsible for satisfying any outstanding debt owned by Utility associated with said improvements.

e. A determination by the PSC that Utility's rates, costs of services, administrative fees, and/or other applicable charges render the Utility no longer a commercially viable service provider.

f. Utility declares bankruptcy or otherwise ceases its business.

4. In the event Utility desires to sell or assign the Property Interests to another entity, Developer will have a right to receive notice of Utility's intent to sell for a period of not less than one-hundred and twenty (120) days in advance of the date of sale. Such notice shall be given pursuant to the notice provisions contained herein. During the one-hundred and twenty (120) day period, Developer shall have a right of first refusal to purchase the Property Interests. Should Developer execute its right of first refusal within that period, Utility agrees to provide Developer additional time to secure any approvals, as necessary, required by governmental and regulatory authorities before final execution of Utility's sale of Property

Interests to Developer. Under this event, in addition to the \$5,000.00, one of the following (at the Developer's sole discretion):

- a. the Developer (or its assign) will pay Utility the depreciated value (assessed at the time of payment utilizing the appropriate IRS Guidelines) of all commercially reasonable and necessary upgrades or improvements to the System minus any outstanding debt associated with any such upgrades or improvements, and the Developer will assume the outstanding debt owed by Utility associated with said improvements; or
- b. the Developer (or its assign) will pay Utility the depreciated value (assessed at the time of payment utilizing the appropriate IRS Guidelines) of all commercially reasonable and necessary upgrades or improvements to the System and the Utility will remain responsible for satisfying any outstanding debt owned by Utility associated with said improvements.

5. The Repurchase Option (including the right of first refusal) is assignable by Developer to the following entities:

- a. Any Homeowners' Association organized and existing as a South Carolina corporation in conjunction with the Site;
- b. Any subsidiary wholly owned by Developer after obtaining the requisite approvals from applicable regulatory authorities;
- c. DHEC and/or any receiver appointed by DHEC or a Court of competent jurisdiction;

- d. A financially viable operator capable of performing this Agreement and obtaining the requisite approvals from applicable regulatory authorities.
6. If the Repurchase Option is exercised, Utility agrees to transfer, or cooperate in facilitating the transfer, of all permits and authorizations required to operate the Facilities and otherwise take any necessary actions to avoid disruption of sewer services to users of the Facilities.
7. If the Repurchase Option is exercised, all remaining terms and conditions in this Agreement are terminated as between the Parties.
8. Developer shall obtain the requisite approvals from applicable regulatory authorities prior to exercising the Repurchase Option and in conjunction with replacing Utility with another authorized operator in order to avoid disruption of sewer services furnished to users of the Facilities. Developer shall have a reasonable period of time to attain all such approvals.

## **ARTICLE VII**

### **General**

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by: labor strikes, by forces act of nature, fire, acts of the public enemy, impossibility of performance due to an intervening change in law, orders of a military body or agency, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise

provided for herein. Should any of the foregoing events occur, the Parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.

2. Utility shall purchase and maintain, or otherwise ensure that any entity with which it contracts to furnish services relating to the operation and maintenance of Facilities shall purchase and maintain, comprehensive general liability, property, and other insurance with policy limits not less than one million dollars (\$1,000,000.00), or such other greater amount as determined to be commercially reasonable after an appropriate risk assessment has been conducted by Utility, and providing protection from the claims set forth in the subparagraphs below which may arise out of or result from Utility's ownership, operation, and maintenance of the Facilities:

- a. Claims for damages because of bodily injury, occupational sickness, or disease, or death including disability benefits and other worker's compensation acts benefits for the Utility's employees. (If and when Utility might have employees.);
- b. Claims for damages because of bodily injury, sickness, disease, or death of any person other than Utility's employees;
- c. Claims for damages because of injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle. (If and when Utility may have any motor vehicles.);
- d. Claims for damages of injury or destruction of real or personal property whether by negligence or nuisance, including losses sustained to the Facilities, as may be submitted by an interested party under this Agreement as an insurable claim.

Utility agrees to have Developer named as an additional insured under any and all such policies required to be maintained by this Paragraph.

3. Except as provided in this Agreement, Developer acknowledges that Utility's obligation to provide utility service is expressly conditioned upon the Parties' mutual understanding that Utility has no obligation to install any additional capacity to serve the Property.
4. Restrictions on the wastewater treatment system for the individual residential units are listed in **Exhibit 3** to this Agreement. Developer agrees to include these items in the homeowners covenants and restrictions.
5. Developer agrees to control the discharge into the system by adhering to the prohibitions listed in **Exhibit 4** to this Agreement.
6. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquished on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
7. This Agreement and the representations and warranties contained herein shall survive, and continue in effect for a term of twenty (20) years, unless cancellation occurs by virtue of Repurchase as provided by Article VI. However, in any event, the Option to Repurchase set forth in Article VI shall not renew for more than three successive terms, while the remaining terms of the contract shall renew indefinitely, unless the Option to Repurchase is first exercised during its applicable term.
8. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentations or breach of any representation,

warranty or agreement on the part of Utility under this Agreement. Utility further agrees to indemnify Developer, its successors and assigns, for all liabilities relating to or arising out of Utility's ownership, maintenance, or operation of the Facilities or acts or omissions relating thereto. Utility agrees to pay all attorneys' fees, expert fees, and costs associated with indemnity provided to Developer under this Agreement. Developer agrees to indemnify Utility, its successors and assigns, and hold it harmless for all liabilities relating to or arising out of Developer's construction of the facilities or any upgrade of the facilities, and Developer further agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty, or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer. Developer agrees to pay all attorneys' fees, expert fees, and costs associated with the indemnities provided to the Utility under this Agreement.

9. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.
10. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility:

Jacabb Utilities, LLC  
2 10 W. North Second Street  
Seneca, SC 29678  
ATTN: Steve Goldie  
Managing Owner

If to Developer:

The Cliffs at Keowee Springs, LLC  
3598 Hwy 11  
Travelers Rest, SC 29690  
ATTN: James B. Anthony  
Managing Owner

11. Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.
12. Except as otherwise expressly provided herein, this Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
13. This Agreement shall be governed by the laws of the State of South Carolina.
14. If this Agreement is not executed prior to May 31, 2008 then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party, and the Agreement shall be deemed terminated.
15. The Parties represent and warrant that the undersigned individuals have been duly authorized to execute this Agreement and all other instruments contemplated in furtherance of the same.

## **ARTICLE VIII**

### **Remedies & Attorneys' Fees**

1. The Parties agree and believe that the subject matter of this Agreement creates and confers specific and unique rights and privileges for which money damages could not fully compensate, if lost due to the breach of either party. As a consequence, if a breach of the Agreement occurs, the Parties agree and stipulate to the availability of equitable remedies, including but not limited to, specific performance, temporary restraining order, preliminary injunctive relief, and permanent injunctive relief. All such equitable relief will be cumulative to the relief otherwise available to the Parties at law.
2. Notwithstanding any other provision herein, the Parties may seek preliminary injunctive relief in the Pickens County Court of Common Pleas, and that Court shall retain jurisdiction relating thereto, even if the parties opt to arbitrate any remaining claims or issues.
3. In any action to enforce any provision contained in this Agreement, or seeking damages for any breach of any provision contained in this Agreement, the prevailing party will be entitled to recoup reasonable attorneys' fees, expert fees, litigation costs, copying costs, professional service fees, filing costs, paralegal expenses, investigative fees, travel costs, and all other fees, expenses, or costs associated with the legal action in which the Agreement was enforced.

**[SIGNATURES ON FOLLOWING PAGE]**

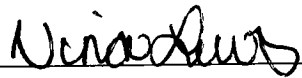
IN WITNESS WHEREOF, the Parties hereto have executed this instrument by and through their authorized representatives set out below.

Jacabb Utilities, LLC

By: 


Its: Managing Owner

Attest:



5.16.08

(Date)



5/16/08

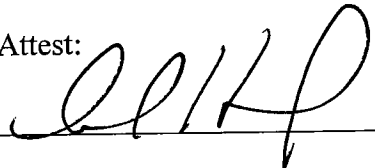
(Date)

The Cliffs at Keowee Springs, LLC

By: 

Its: Managing Owner

Attest:



5/21/08

(Date)



5-21-08

(Date)

STATE OF SOUTH CAROLINA    )

COUNTY OF OCONEE                    )

PERSONALLY appeared the undersigned witness and made oath that s/he saw the within named Jacabb Utilities, LLC by its duly authorized member, sign, seal, and as its act and deed deliver the Agreement for Sewer Services and that she, with the other witnesses subscribed above, witnessed the execution thereof.

Sheila J. Tinsley

SWORN to before me this

16 day of May, 2008

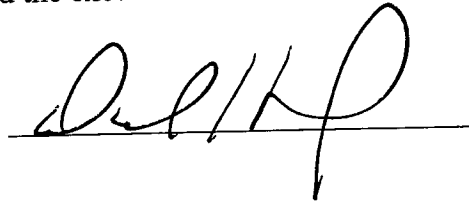
Sheila J. Tinsley (SEAL)  
Notary Public for South Carolina  
My Commission expires: May 22, 2016

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

)  
)  
)

PERSONALLY appeared the undersigned witness and made oath that s/he saw the within named The Cliffs at Keowee Springs, LLC by its duly authorized member, sign, seal, and as its act and deed deliver the Agreement for Sewer Services and that she, with the other witnesses subscribed above, witnessed the execution thereof.

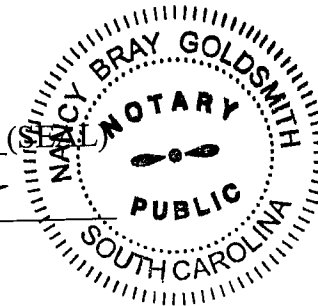


SWORN to before me this

21<sup>st</sup> day of May, 2008

Nancy Bray Goldsmith  
Notary Public for South Carolina

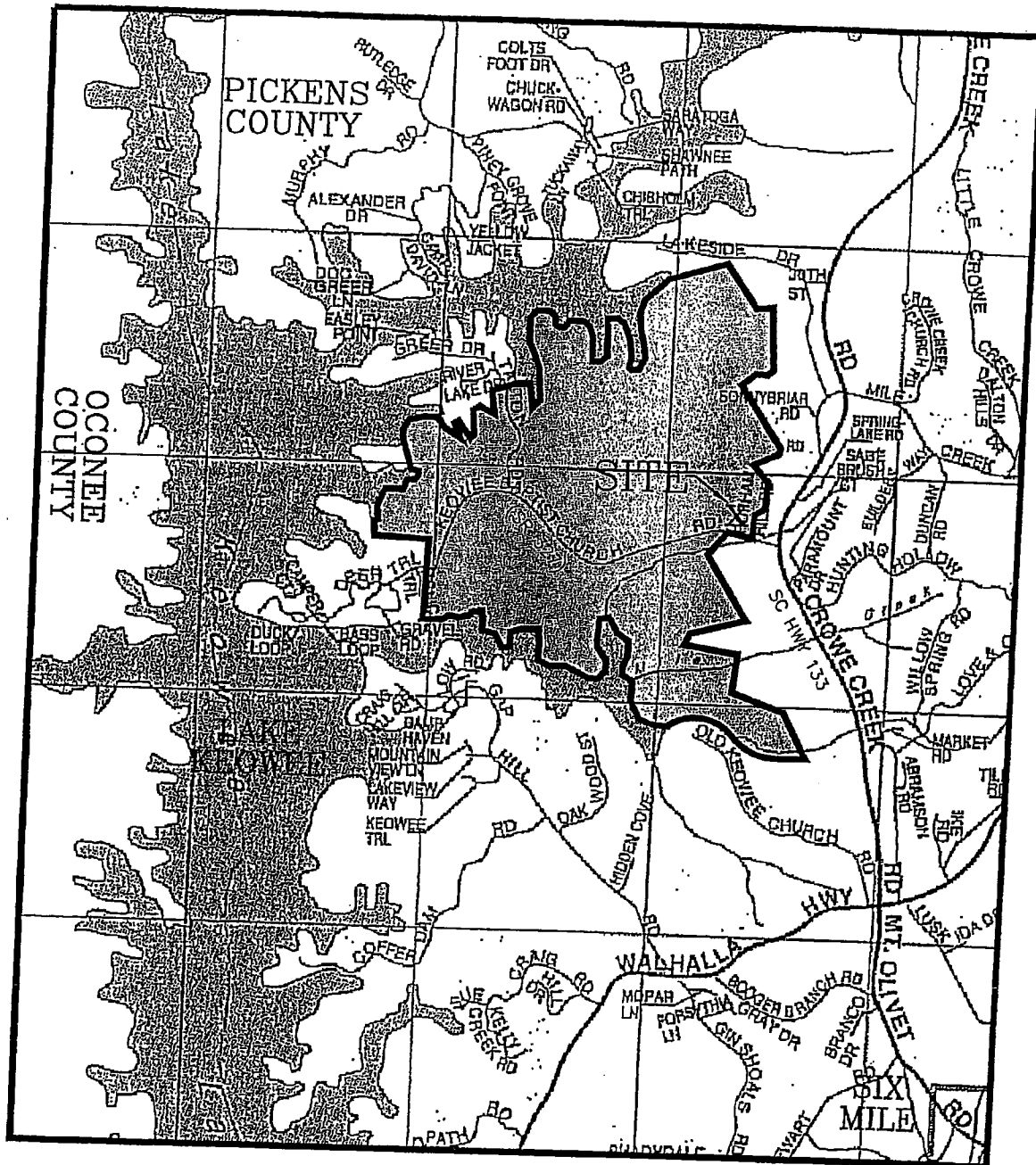
My Commission expires: 11/29/2015



**EXHIBIT 1**  
**VICINITY MAP**

VICINITY MAP - NOT TO SCALE

EXHIBIT 1



**EXHIBIT 2**

**AVAILABILITY FEE &  
RATES**

Keowee Springs  
The Cliffs  
Jacabb Utilities, LLC  
March 4, 2008

## EXHIBIT 2

### Availability Fees and Rates

Design Flow 85,145

Cost per 400 gpd unit or residential unit	Availability	\$25.00
	User Rate	\$35.00

No. Units	Residential Billing Costs	GPD/Unit	Total Residential GPD	Monthly Availability Fee	Monthly User Fee
45	Range Condos	150	6750	\$25.00	\$35.00
20	Range Townhomes	300	6000	\$25.00	\$35.00
5	Lake View & Lake Front Homes	480	2400	\$25.00	\$35.00
18	Lake Cottages	400	7200	\$25.00	\$35.00
12	Spa Townhomes	400	4800	\$25.00	\$35.00
22	Tennis Villas	400	8800	\$25.00	\$35.00
32	Marina Townhomes	400	12800	\$25.00	\$35.00
<b>Total Residential</b>			<b>48,750</b>		

Annual Cost for Amenities	# of 400 GPD units	GPD		
Total Lodge	10	4,000	\$250.00	\$350.00
Total Spa	16	6,500	\$400.00	\$560.00
Future Hotel	25	10,000	\$625.00	\$875.00
Total Medical/Wellness	14	5,400	\$350.00	\$490.00
Total Tennis/Pool/Children	9	3,420	\$225.00	\$315.00
Clubhouse	9	3,400	\$225.00	\$315.00
Marina with SnackBar	2	900	\$50.00	\$70.00
Total Creative Discovery Center	2	800	\$50.00	\$70.00
Laundry/Distribution	5	1,975	\$125.00	\$175.00
<b>Total Amenities</b>	<b>91</b>	<b>36,395</b>		

Allocated Flow	85,145
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**EXHIBIT 3**

**RESTRICTIONS**

## **EXHIBIT 3**

### **Covenants and Restrictions Regarding Wastewater Treatment System**

Homeowners are provided with the Onsite Homeowner's Manual which details preventive maintenance for homes with onsite wastewater treatment systems along with the equipment warranty for the treatment system.

Homeowners shall:

NEVER enter a tank or access riser. Gases that can be generated in the tank and/or oxygen depletion can be fatal. Report loose or missing lids and bolts immediately.

Maintain active and continuous telephone service to the wastewater control panel. The system is monitored round-the-clock using the telemetry equipped control panel. A dedicated phone line is not necessary, the ordinary home telephone that permits calls to the manufacturer's 800 number is sufficient.

Provide for unfettered access to the wastewater system by the maintenance company operator for scheduled and emergency inspection and maintenance.

NOT flush dangerous and damaging substances into your wastewater treatment system such as pharmaceuticals, excessive amounts of bath or body oils, water softener backwash, flammable or toxic products, household cleaners (especially floor wax and rug cleaners), chlorine bleach, chlorides, pool or spa products, pesticides, herbicides, or agricultural chemicals or fertilizers.

Report any broken, damaged or missing hardware such as lids and air vents to the maintenance company operator.

NOT use special additives that are touted to enhance the performance of your septic tank or treatment system because they will harm the natural microorganisms that grow in your system.

NOT dispose of excessive food solids into the system. These should be disposed of with the household trash. Food byproducts accelerate the need for septage pumping and increase maintenance frequency.

NOT discard into the system substances that cause maintenance problems and/or increase the need for septage pumping, such as: egg shells, cantaloupe seeds, gum, coffee grounds, tea bags, chewing tobacco, cigarette butts, paper towels, newspapers, sanitary napkins, diapers, kitty litter, candy wrappers, cooking grease, rags, and large amounts of hair.

NOT dispose of excessive quantities of grease into the system.

NOT leave interior faucets on for any reason, such as protecting water lines during cold spells.

NOT use excessive amounts of water and conserve water as much as possible. Using 50 gallons per person per day is typical.

Maintain internal home plumbing system in good repair and eliminate leaks, drips, or excess flows immediately.

Keep lint out of your wastewater treatment system by cleaning the lint filters on your washing machine and dryer before every load. Adding a supplemental lint filter on your washing machine is a good precautionary measure.

Landscaping is permitted in the immediate area of the treatment system and control panel if the plants, at full size, are less than 12" tall and not placed in a position that inhibits access to the system. Ivy or other creeping plants are prohibited, along with plants with thorns, such as roses or holly. Do not dig or allow digging without knowing the location of your wastewater treatment system underground tanks and lines, and coordinating with the maintenance company.

NOT drive nor park over any buried components in your system. Protect the system with landscape barriers such as hedges, landscape logs as necessary to keep traffic off the system.

NOT dump nor allow dumping of RV waste into your wastewater treatment system and tanks. RV waste fouls and clogs or fouls equipment.

NOT connect rain gutters or storm/diversion drains to the system or allow surface water/runoff to drain to or collect near tanks or equipment.

NOT turn off the main circuit breaker to the wastewater pumps when going on vacation etc. The pumps will continue to run on a decreased cycle time while you are away and the control panel will continue to report the wastewater system status to the operator/maintenance company.

**EXHIBIT 4**

**PROHIBITIONS**

## Exhibit 4

**General Prohibitions.** No user shall introduce or cause to be introduced into the System any pollutant or wastewater which causes pass-through or interference or shall introduce or cause to be introduced pollutants, substances, or wastewater that have not been processed or stored in such a manner that they could be discharged to the System. No industrial user shall discharge to the System without authorization from Jacabb Utilities, LLC.

**Specific Prohibitions.** No user shall introduce or cause to be introduced into the System the following substances, or wastewater:

(1) Pollutants which create a fire or explosive hazard in the System, including, but not limited to, waste with a closed-cup flash point of less than 140°F (60°C) using the test methods specified in 40 261.21.

(2) Wastewater having a pH lower than 5.5 or higher than 12.0, or otherwise causing corrosive structural damage to the System or equipment.

(3) Any solids or viscous substances that may cause obstruction to flow or be detrimental to sewerage operations. These objectionable substances include, but are not limited to, asphalt, dead animals, ashes, sand, mud, straw, industrial process shavings, metals, glass, rags, feathers, tar, plastics, whole blood, paunch manure, bones, hair and fleshings, entrails, paper dishes, paper cups, milk containers, or other similar paper products, either whole or ground.

(4) Any animal or vegetable based oils, fats, or greases whether or not emulsified, which would tend or clog, cause interference, pass through, or adverse effects on the System. Grease removed traps or interceptors shall not be discharged to the System.

(5) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the System.

(6) Reserved.

(7) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin at a total concentration exceeding 100 mg/l.

(8) Wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with pollutants, to injure or interfere with a wastewater treatment process, constitute a hazard to humans animals, or create a toxic effect in the receiving ground waters of the System.

(9) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized by Jacabb Utilities, LLC.

- (10) Pollutants which result in the presence of toxic gases, vapors, or fumes within the System in a may cause acute worker health and safety problems. Acute worker health and safety problems defined using the most recent information on TWA-TLV, TWA-STEL, and IDLH from the American Conference of Governmental Industrial Hygienists (ACGIH), National Institute for Occupational Health (NIOSH), EPA, and the Occupational Health and Safety Administration (OSHA).
- (11) Trucked or hauled pollutants, unless specifically agreed to by Jacabb Utilities, LLC.
- (12) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance, inspection or repair.
- (13) Wastewater which imparts color that cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (14) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable Federal and State regulations or permits issued by Federal and State Agencies and specifically authorized by Jacabb Utilities, LLC.
- (15) Sludge, screenings, or other residues from the pretreatment of industrial wastes.
- (16) Medical or infectious wastes, except as specifically authorized by JACABB UTILITIES, LLC in a wastewater discharge permit.
- (17) Detergents, surface-active agents, or other substances which may cause excessive foaming and cause interference and pass-through the Wastewater Treatment Plant.
- (18) Waters or wastes containing phenol or other taste- or odor-producing substances in such concentrations exceeding limits established by Federal, State or other public agencies having jurisdiction for the discharge to the receiving waters.
- (19) Garbage that has not been properly shredded to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in the System. At no time shall the concentration of properly ground garbage exceed a level that would prevent the System from maintaining the required efficiency or cause operational difficulties.
- (20) Swimming pool drainage unless specifically authorized by JACABB UTILITIES, LLC. No person who fills a swimming pool with non-metered water may discharge swimming pool drainage to a sanitary sewer without a JACABB UTILITIES, LLC wastewater discharge authorization.
- (21) It shall be unlawful for silver-rich solution from a photographic processing facility to be discharged or otherwise introduced into the System, unless such silver-rich solution is managed by the photographic processing facility in accordance with the most recent version of the Silver CMP prior to its introduction into the System.